IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Writ Petition No. 2816 of 2006

ATV Projects India Limited]
a Company duly registered and]
incorporated under the]
Companies Act, 1956 having its]
registered office at D-8, MIDC,]
Street No. 16, Marol, Andheri (E),]
Mumbai 400 093] ...Petitioner

VERSUS

1. The State of Maharashtra]
through the Government]
Pleader, High Court (O.S.),]
Bombay]

2. The Central Bank of India]
having their office at]
Chandramukhi, Ground Floor,]
Nariman Point, Mumbai 400 021]

3. The Bank of India]
Mumbai Corporate Bank]
Branch, Bank of India]
Building, 4th Floor, M.G. Road,]
Fort, Mumbai 400 023]

4. The Reserve Bank of India]
having their office at]
Shahid Bhagatsingh Road,]
Fort, Mumbai 400 001] ...Respondents.

Mr. Subhash Jha i/by M/s. Law Global for the Petitioner

The Respondents absent (served).

CORAM: SWATANTER KUMAR,C.J., &
S.C. DHARMADHIKARI, J.

JUDGMENT RESERVED ON: APRIL 24, 2007
JUDGMENT PRONOUNCED ON: JUNE 21, 2007

JUDGMENT (Per Swatanter Kumar, C.J.):-

1. In this petition under Article 226 of the Constitution of India, the petitioner questions the legality, validity and propriety of the notice dated 31st May, 2006 issued by respondent No. 2 to the petitioner.

2. The Central Bank of India informed the petitioner that there was outstanding a sum of Rs.2,63,81,46,559.65 as on 10th January, 2006 and that the petitioner was sending the evidence of security given / charged to the bank with a view to delay action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the Securitisation Act"); and issued certain directions. It was also stated that the bank, along with

the consortium banks, is intending to take further action under Section 13 (4) of the Act; and advised the petitioner and guarantors to fully co-operate.

3. The necessary facts are that the petitioner was declared as a "Sick Company" within the meaning of Section 3 (1) (o) of the Sick Industrial Companies (Special Provisions) Act, 1985 by the Board for Industrial and Financial Reconstruction; and the Central Bank of India had issued notice under Section 13(2) of the Securitisation Act. The bank, vide their letter dated 31st May, 2006, informed the petitioner that they, along with other consortium banks, are intending to take further action; and that is why the petitioner has approached this Court, taking the ground that this Court should interfere, in view of the judgment of the Supreme court in *Harbanslal Sahnia & Anr. v. Indian Oil Corporation Ltd. & Ors.*, (2003) 2 SCC 107, because the patent action of the respondents is likely to jeopardise the process of rehabilitation, apart from depriving more than 150 workmen of their livelihood. The Bank have themselves not fulfilled their obligations, and without involving all other banks in accordance

with the provisions of the Securitisation Act, in fact, have no jurisdiction even to issue the impugned notice.

4. The learned counsel appearing for the petitioner ably relied upon the judgment of the Allahabad High Court dated 8th May, 2003 in the case of *Garlon Polyfab Industries Ltd. & Ors. v. State Bank of India & Anr.*, to contend that in terms of the provisions of Section 13(9) of the Securitisation Act, the secured creditors cannot exercise the right under Section 13(4), unless the secured creditors representing not less than 3/4th of the total value of amount outstanding agree to take such an action. No doubt, the Bench of the Allahabad High Court had taken the view that recourse to Section 13(4) is not permissible when the action is violative of Section 13(9) of the Securitisation Act. That does not appear to be the situation in the case in hand, as the bank is alleged to have acted without the mandate of the consortium banks.

5. Be that as it may, the first obstacle in the way of the petitioner is with regard to the maintainability of the present Writ Petition,

in view of Section 17(2) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The Appellate Authority has jurisdiction to entertain appeal against any order passed by the Tribunal in exercise of its power on the application of a bank and/or financial institution for recovery of its debts. In the face of the statutory and equally efficacious remedy being available to the petitioner, there is no occasion for us to entertain this Writ Petition; and that, too, at this initial stage of the proceedings. The principle enunciated by the Supreme Court in *Harbanslal Sahnia*'s case has no application to the facts of the present case, inasmuch as there is no principle of natural justice involved, nor the notice, which is issued, can be said to be without jurisdiction. In fact, the petitioner has invoked the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India to circumvent the legal process provided under the special statute.

6. We see no reason to interfere in this petition. The same is dismissed *in limine*.

CHIEF JUSTICE

S.C. DHARMADHIKARI, J.